IN THE HIGH COURT OF BOMBAY AT GOA.

LETTERS PATENT APPEAL NO. 21 OF 1999.

Mr. Virgilio Velho,
M/s. Velhos & Filhos,
Velho Building, Panaji. ... Appellant.

Versus

Deputy Regional Director,
Sub-Regional Office,
Employees State Insurance
Corporation, 46, Defence
Colony, Porvorim. ... Respondent.

Mr. Girish Sardessai with Mr. S.G. Bhobe, Advocates for the Appellant.

Mrs. A.A. Agni with Mrs. N.N. Narvekar, Advocates for the Respondent.

Coram : R.J. KOCHAR AND
P.V. HARDAS, JJ.

Date : 19th August 2003.

ORAL JUDGMENT (PER HARDAS, J.)

This Letters Patent Appeal has been filed by the respondent in Appeal under E.S.I. Act No. 2 of 1994, which was allowed by the learned Single Judge of this Court, by Judgment, dated 15th January 1999.

2. Mrs. Agni, the learned counsel appearing on behalf of the respondent before us, has raised a preliminary objection regarding the maintainability of the appeal. In view of the preliminary objection which is raised, we do not consider it necessary to advert to the facts or to the challenges on the facts. Admittedly, the first appeal was filed under the provisions of the Employees' State Insurance Act against

the Judgment of the Employees Insurance Court, Panaji, dated 27th April 1994, in Case No. EIC/9/87. Mrs. Agni, the learned counsel appearing on behalf of the respondent, has invited our attention to the Judgment of a Full Bench of this Court in **Gangwani & Co. & Ors. v. Saraswati wd/o Maniram Banewar & Ors.**, 2001 II CLR 842. The Full Bench in paragraph 28 has held as under:-

> "28. The above referred observations make it undoubtedly clear that only such forum/Tribunal/Authority can be called as Court, which is a part of the ordinary hierarchy of the Courts of the Civil Judicature and exercise the judicial power of the State as well as perform all the judicial functions of the State. While applying these characteristics in respect of the question in issue, it is difficult to hold that the Commissioner appointed under Section 20 of the Workmen's Compensation Act, 1923, can be called a Court, firstly, because the Workmen's Compensation Act is a special statute enacted by the Legislature for a specific purpose and with definite objectives. The Commissioner has been given specific powers and is entitled to adjudicate on specific aspects only, provided under the Act and Rules. He does not perform all the judicial functions of the State and is also not empowered to take cognisance of any other aspect other than those provided under the provisions of the Act and Rules. In the circumstances, therefore, in our opinion, merely because some of the provisions of the Code of Civil Procedure are made applicable to the proceedings before the Commissioner, such as summoning of witnesses, compelling the production of documents and for service of their process etc. and Commissioner discharges functions which are similar to those of the Court and also may have some of the

> trappings of the Court, that is not enough to hold that he acts as a Court of Justice and is a part of the hierarchy of the Civil Courts."

3. The Full Bench was considering whether the Commissioner under the Workmen's Compensation Act was a Court and, therefore, would the Judgment of the learned Single Judge in appeal under Section 30 of the Workmen's Compensation Act be a Judgment within the meaning of Clause 15 of the Letters Patent. The learned Judges of the Full Bench, accordingly, held that the Commissioner under the Workmen's Compensation Act was not a Court and, therefore, the Judgment of the learned Single Judge in appeal under Section 30 of the Workmen's Compensation Act would not be a Judgment within the meaning of Clause 15 of Letters Patent. The learned Judges of the Full Bench then further held that the Commissioner, who was discharging the functions under the provisions of the Workmen's Compensation Act may have trappings of a Civil Court yet he is not a Court nor a Civil Court subordinate to the High Court within the meaning of Section 3 of the Code of Civil Procedure. The learned Judges also held that the object of enacting Section 30 of the Workmen's Compensation Act was to limit the appeals only on substantial questions of law. The Full Bench, therefore, came to the conclusion that the Judgment rendered by the learned Single Judge in appeal under Section 30 of the Workmen's Compensation Act could not be construed to be a Judgment as envisaged in Clause

15 of the Letters Patent (Bombay) and, therefore, the Letters Patent Appeal was not maintainable.

4. Mr. Sardessai, the learned counsel appearing on behalf of the appellant, has urged before us that the decision of the Full Bench was rendered in respect of the provisions of the Workmen's Compensation Act and, therefore, the ratio of the decision of the Full Bench is inapplicable to an appeal which is filed under the Employees' State Insurance Act.

5. An appeal under the Employees' State Insurance Act, 1948 can be filed under Section 82. Section 82 reads thus:-

> **"82. Appeal**
>
> (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.
>
> (2) An appeal shall lie to the High Court from an order of an Employee' Insurance Court if it involves substantial question of law.
>
> (3) The period of limitation for an appeal under this section shall be sixty days.
>
> (4) The provisions of sections 5 and 12 of the [Limitation Act, 1963] shall apply to appeals under this section."

A plain reading of the above provision would show that an appeal under Section 82 of the Employees'

State Insurance Act from an Order of the Employees' Insurance Court can only be entertained if it involves substantial questions of law. Thus, the provision of appeal under Section 82 of the Employees' State Insurance Act is pari materia with the provisions of Section 30 of the Workmen's Compensation Act. Therefore, the decision of the Full Bench in Gangwani & Co & Ors. v. Saraswati wd/o Maniram Banewar & Ors. (supra) can be applied with full force to the decision of the learned Single Judge in an appeal under the Employees' State Insurance Act. According to us, therefore, in view of the decision of the Full Bench in Gangwani & Co & Ors. v. Saraswati wd/o Maniram Banewar & Ors. (supra), the present Letters Patent Appeal is not maintainable. Since we have come to the conclusion that the Letters Patent Appeal is not maintainable, we have not adverted to the various submissions on merits advanced before us by Mr. Sardessai, learned counsel for the appellant.

6. In view of what is stated above, the Letters Patent Appeal is dismissed with no order as to costs.

(R.J. KOCHAR)
JUDGE.

(P.V. HARDAS)
JUDGE.

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